

Introduced by Senator Kehoe

February 25, 2009

An act to add Article 13.5 (commencing with Section 25250.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 346, as introduced, Kehoe. Hazardous materials: motor vehicle brake friction materials.

Existing law establishes the Department of Toxic Substances Control, in the California Environmental Protection Agency, with powers and duties regarding the management of hazardous waste. Existing law, administered by the Department of Toxic Substances Control, prohibits the management of hazardous waste except in accordance with the hazardous waste control laws, including laws governing the removal of any mercury-containing vehicle light switch from a vehicle, and the regulations adopted by the department. A violation of the hazardous waste control laws is a crime.

This bill would require the Department of Toxic Substances Control to conduct a baseline survey, on or before January 1, 2013, of the concentration levels of nickel, zinc, and antimony in motor vehicle brake friction materials. The bill would require the department, commencing January 1, 2013, and at least every 3 years thereafter, to monitor the concentration levels of those constituents in motor vehicle brake friction materials to ensure that those levels do not increase by more than 50% above the baseline levels established through the baseline survey. In that case, the bill would require the department to complete scientific studies to evaluate the need to establish a maximum concentration of any or all of these constituents in brake friction

materials, and would authorize the department to establish a maximum allowable concentration for those constituents, as specified.

This bill would, commencing January 1, 2014, prohibit the sale of any motor vehicle brake friction materials containing specified constituents, including, but not limited to, cadmium, lead, and mercury, in amounts that exceed certain concentrations. The bill would, commencing January 1, 2023, restrict the concentration of copper in motor vehicle brake friction materials sold in California, as specified. The bill would require all manufacturers of friction materials used in brakes on new motor vehicles, or as replacement parts, that are sold in this state to obtain a certification of compliance with these requirements from a 3rd party testing agency, and to mark proof of certification on the friction materials. Any violation of the certification requirements would be subject to remedies and penalties provided for acts of unfair competition. The bill would require the Department of Toxic Substances Control to enforce these provisions, and would require the department to remove from sale any brake friction materials determined to be not in compliance. A violation of these provisions would be subject to a civil fine of up to \$10,000 per violation. Because a violation of these provisions would also be a crime pursuant to the hazardous waste control laws, the bill would impose a state-mandated local program.

The bill would require the department, commencing January 1, 2011, and after consulting interested parties, to establish a fee on each new axle brake set sold in this state at a level sufficient to fully implement these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Friction materials are an essential component of motor
- 4 vehicle brake systems and of critical importance to transportation
- 5 safety and the public safety in general.

1 (b) Debris from friction materials are generated and released to
2 the surrounding environment in the course of normal brake system
3 operation.

4 (c) Brake friction materials on motor vehicles are known to
5 contain constituents, including copper, that have been proven to
6 be harmful when found in significant quantities in the environment,
7 and are regulated as part of a system of laws and regulations
8 intended to prevent pollution and preserve the environment.

9 (d) Consistent with the critical role brake systems play in
10 transportation safety, limits on those harmful constituents are
11 necessary to protect and enhance California's environment.

12 (e) Manufacturers of brake friction materials shall use due
13 diligence to ensure that formulations that replace copper in brake
14 friction materials are less harmful to public health and the
15 environment.

16 SEC. 2. Article 13.5 (commencing with Section 25250.50) is
17 added to Chapter 6.5 of Division 20 of the Health and Safety Code,
18 to read:

19
20 Article 13.5. Motor Vehicle Brake Friction Materials
21

22 25250.50. For purposes of this article the following definition
23 apply:

24 (a) "Board" means the State Water Resources Control Board.

25 (b) "Department" means the Department of Toxic Substances
26 Control.

27 (c) "Motor Vehicle" has the same meaning as defined in Section
28 415 of the Vehicle Code.

29 (d) "Testing agency" means an agency approved by the
30 department as qualified and equipped for the testing of products,
31 materials, equipment, and installations in accordance with
32 nationally recognized standards.

33 25250.52. (a) On and after January 1, 2018, any newly
34 reengineered motor vehicle models fitted with brake pads
35 containing friction materials that exceed 5 percent copper by weight
36 shall not be sold in this state.

37 (b) On and after January 1, 2023, any motor vehicle brake
38 friction materials exceeding 5 percent copper by weight shall not
39 be sold in this state.

(c) On and after January 1, 2032, any motor vehicle brake friction materials exceeding 0.5 percent copper by weight shall not be sold in this state.

25250.54. On and after January 1, 2014, any motor vehicle brake friction materials containing any of the following constituents in an amount that exceeds the following concentrations shall not be sold in this state:

(a) Cadmium and its compounds: 0.01 percent by weight.

(b) Chromium(VI)-salts: 0.1 percent by weight.

(c) Lead and its compounds: 0.1 percent by weight.

(d) Mercury and its compounds: 0.1 percent by weight.

(e) Asbestiform fibers: 0.1 percent by weight.

25250.56. (a) On or before January 1, 2013, the department shall conduct a baseline survey of the concentration levels of nickel, zinc, and antimony in motor vehicle brake friction materials. Commencing January 1, 2013, and at least every three years thereafter, the department shall monitor the following constituents to ensure that concentration levels of those constituents in motor vehicle brake friction materials do not increase by more than 50 percent above the baseline levels established through the baseline survey.

(1) Nickel and its compounds.

(2) Zinc and its compounds.

(3) Antimony and its compounds.

(b) If monitoring results show that concentration levels have increased by more than 50 percent above the baseline levels, the department shall complete scientific studies to evaluate the need to establish a maximum concentration of any or all of these constituents in brake friction materials. All studies and surveys conducted by the department shall be subject to public review and comment.

(c) If the department determines that the scientific studies demonstrate the need for controlling the use of the studied constituent in brake pads, the department shall establish a maximum allowable concentration for that constituent, by regulation adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

25250.58. The following motor vehicle classes and brakes are exempt from this article:

1 (a) Military combat vehicles.

2 (b) Vehicles employing internal closed oil immersed brakes, or
3 a similar brake system that is fully contained and emits no copper,
4 other debris, or fluids under normal operating conditions.

5 (c) Totally sealed brakes used for the primary purpose of holding
6 the vehicle stationary, and not designed to be used while the vehicle
7 is in motion.

8 25250.60. (a) Commencing January 1, 2014, all manufacturers
9 of friction materials used in brakes on new motor vehicles, or as
10 replacement parts, that are sold in this state shall obtain a
11 certification of compliance with the requirements of Sections
12 25250.52 and 25250.54 from a third party testing agency. Proof
13 of certification shall be marked on the friction materials.

14 (b) Any violation of subdivision (a) is an act of unfair
15 competition subject to all remedies and penalties provided by
16 Chapter 5 (commencing with Section 17200) of Part 2 of Division
17 7 of the Business and Professions Code.

18 (c) Commencing January 1, 2014, retailers of friction materials
19 shall ensure that only brakes certified for sale in this state are
20 offered for sale in this state.

21 25250.62. (a) Any violation of this article, including the
22 falsification of third party certification, by brake pad manufacturers,
23 distributors, or retailers, shall be subject to a civil fine of up to ten
24 thousand dollars (\$10,000) per violation.

25 (b) The department shall enforce this article. The department
26 shall remove from sale in this state any brake friction materials
27 determined to be not in compliance with this article.

28 25250.64. (a) After consulting interested parties, the
29 department shall establish a fee on each new axle brake set sold
30 in this state, whether fitted to a new vehicle or sold separately, at
31 a level sufficient to fully implement this article. The fee shall be
32 assessed commencing on and after January 1, 2011.

33 (b) The fee may be used to cover costs for outreach,
34 administration, fee collection, enforcement, monitoring, mitigation,
35 and control measures related to copper and other constituents in
36 brake friction materials.

37 (c) Not more than 5 percent of the fees collected pursuant to
38 this section shall be used to offset accounting costs incurred by
39 retailers for fee collection.

1 (d) The department shall consult with the board prior to
2 allocating funds to, or implementing any provisions of this article
3 relating to, motor vehicle brake friction materials constituent
4 monitoring, mitigation, or control measures.

5 SEC. 3. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.